



JUDICIARY COMMITTEE

MEETING PACKET

**Tuesday, April 4, 2006
10:15 a.m. – 11:00 a.m.
Morris Hall
(17 HOB)**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Judiciary Committee

Start Date and Time: Tuesday, April 04, 2006 10:15 am

End Date and Time: Tuesday, April 04, 2006 11:00 am

Location: Morris Hall (17 HOB)

Duration: 0.75 hrs

Consideration of the following bill(s):

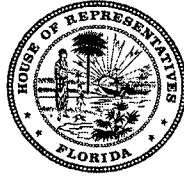
HB 129 Lawful Ownership, Possession, and Use of Firearms and Other Weapons by Baxley

HB 339 CS Sexual Predators by Brandenburg

HB 511 CS On-line Dating Services by Ambler

HB 591 CS Electronic Monitoring by Ambler

NOTICE FINALIZED on 03/31/2006 13:41 by Williams.Tanesha



Florida House of Representatives

Judiciary Committee

Allan G. Bense
Speaker

David Simmons
Chair

COMMITTEE ON JUDICIARY

Morris Hall (17 HOB)

April 4, 2006

10:15 a.m. – 11:00 a.m.

Agenda

1. **Call to order**
2. **Roll call**
3. **Welcome and opening remarks**

Representative David Simmons, Chair

4. **Consideration of the following bills:**

<u>Bill</u>	<u>Sponsor(s)</u>	<u>Title</u>
HB 129	Baxley	Lawful Ownership, Possession, and Use of Firearms and Other Weapons
HB 339 CS	Brandenburg	Sexual Predators
HB 511 CS	Ambler	On-line Dating Services
HB 591 CS	Ambler	Electronic Monitoring

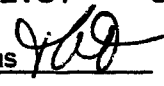
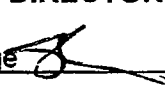
5. **Closing remarks**

Representative David Simmons, Chair

6. **Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 **Lawful Ownership, Possession, and Use of Firearms and Other Weapons**
SPONSOR(S): Baxley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary Committee</u>		Thomas 	Hogge 
2) <u>Agriculture Committee</u>			
3) <u>Justice Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill addresses provisions relating to the storage and transport of firearms in a motor vehicle on property set aside for the parking of a motor vehicle.

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles.

The bill creates a criminal penalty of a third degree felony for violation of the prohibition created by the bill.

The bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles.

The bill takes effect upon becoming a law.

This bill does not appear to have a fiscal impact on state or local government.

- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; or
- Investigators employed by the several public defenders of the state or the capital collateral representative.

Subsection (5) of s. 790.06, F.S., specifically provides that it is lawful "for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use."

Schools

In addition to the statutes discussed above regarding the possession of firearms, each district school board in Florida is required to have a zero-tolerance policy regarding the possession of firearms by students on school grounds.² A violation of the policy must result in a least a one-year expulsion from school and referral to the criminal justice or juvenile justice system. Trespassers that carry a weapon or firearm on school property, public or private, commit a felony of the third degree.³

Congress enacted the Gun Free School Zones Act in 1990.⁴ It was subsequently overturned by the United States Supreme Court as a violation of Congress's powers under the commerce clause to regulate inter-state commerce.⁵ The Act was passed again in 1996 with changes to address the concerns of the Supreme Court that made it only applicable to guns that crossed state lines in commerce.⁶ In general, the Act makes it unlawful for any person to possess a firearm in a school zone. The term "school zone" means "in, or on the grounds of, a public, parochial or private school or within a distance of 1,000 feet from the grounds of a public, parochial or private school." The term "school" means "a school which provides elementary or secondary education, as determined under State law." Whoever violates the Act may be fined up to \$5,000, imprisoned up to five years, or both. Exceptions to this Act include:

- if the person is licensed to do so;
- if the firearm is not loaded and in a locked container, or a locked firearms rack which is in a motor vehicle;
- by an individual for use in a program approved by a school in the school zone;
- by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- by a law enforcement officer acting in his or her official capacity; or
- the firearm is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

Other States

Oklahoma and Alaska have passed laws prohibiting persons and businesses from banning the otherwise lawful possession of a firearm in a locked vehicle in a parking lot.⁷ The Oklahoma statute

² Section 1006.13(2), F.S.

Section 810.095, F.S.

⁴ P.L. 101-647, Sec. 1702(b)(1), 18 USC ss. 921 and 922.

⁵ U.S. v. Lopez, 514 US 549 (1995).

⁶ P.L. 104-208.

⁷ Alaska Stat. Art. 10A, Sec. 18.65.800; Okla. Stat. tit. 21, Pt. IV, Ch. 53, Sec. 1289.7a.

C. SECTION DIRECTORY:

Section 1. Amends s. 790.25, F.S., relating to the lawful ownership, possession, and use of firearms and other weapons.

Section 2. Amends s. 27.53, F.S., relating to the appointment of assistants and other staff by public defenders to conform a cross-reference.

Section 3. Provides that the bill will become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

While the bill does create a new felony penalty which is unranked on the offense severity chart in s. 921.0013, F.S., third degree felonies rarely result in jail or prison time. The Criminal Justice Estimating Conference routinely classifies new third degree felony penalties as having no fiscal impact or insignificant fiscal impact. See also additional fiscal comments in "D." below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any significant impact on local government revenues. See also additional fiscal comments in "D." below.

2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures. While it does create a new felony penalty, third degree felonies rarely result in jail or prison time. See also additional fiscal comments in "D." below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private is unclear. Employers that have policies regarding the possession of firearms in vehicles in their parking lots will no longer enjoy these policies. However, employers may enjoy greater protection from liability regarding the use of a firearm in the employer's parking lot that was lawfully stored in a vehicle. It is unknown how many employers have these policies.

D. FISCAL COMMENTS:

The bill creates a criminal penalty of a felony of the third degree. Any third degree felony conviction under the bill's provisions could result in a fine of up to \$5,000. Pursuant to s. 142.01, F.S., as of July 1, 2004, fines collected under the penal laws of the state are distributed to the Clerk of Courts of the respective county where the prosecution occurred.

pre-1968 Florida law would have allowed such suits under the common-law cause of action for negligence. If so, this bill might be evaluated under the *Kluger* standard.

Right to Bear Arms

The Florida Constitution¹⁹ and the U.S. Constitution²⁰ contain provisions protecting a citizen's right to bear arms. However, these provisions are not implicated without some sort of state action.²¹ The Florida Supreme Court, in interpreting Florida's constitutional provision, held that while "the Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen."²²

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of this bill is upon becoming a law. The bill contains a new criminal penalty. Typically, when creating a criminal penalty, the public may need to be given some time to be put on notice of its creation.

The bill applies to policies or rules affecting any property that has been set aside for the parking of motor vehicles. The bill does not distinguish between commercial property or residential property. If the bill is intended to apply to commercial property only, it may need to be clarified.

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that is **locked in or locked to** a motor vehicle that is on any premises set aside for the parking of motor vehicles. However, the bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and **stored in a locked motor vehicle** on the person's or entity's property that was set aside for the parking of motor vehicles. If these provisions are to be consistent, the bill may need to be amended.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁹ "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Art. I, s. 8(a), Fla. Const.

²⁰ "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

²¹ See *Validity of state gun control legislation under state constitutional provisions securing the right to bear arms*, 86 A.L.R.4th 93; *Constitutional right to bear arms--Federal constitution; generally-- Relationship of right to bear arms to preservation of a militia* 79 Am. Jur. 2d Weapons and Firearms § 6.

²² *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).

1 A bill to be entitled

2 An act relating to lawful ownership, possession, and use
3 of firearms and other weapons; amending s. 790.25, F.S.;
4 prohibiting specified persons, employers, and business
5 entities from establishing, maintaining, or enforcing any
6 policy or rule that prohibits a person from parking a
7 motor vehicle on property set aside for such purpose when
8 a secured firearm or firearms are being lawfully
9 transported and stored in the motor vehicle; providing a
10 penalty; providing construction; providing for specified
11 immunity from liability; providing civil remedies;
12 defining "motor vehicle" for purposes of the act;
13 providing intent; amending s. 27.53, F.S.; conforming a
14 cross-reference; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 790.25, Florida Statutes, is amended to
19 read:

20 790.25 Lawful ownership, possession, and use of firearms
21 and other weapons.--

22 (1) DECLARATION OF POLICY.--The Legislature finds as a
23 matter of public policy and fact that it is necessary to promote
24 firearms safety and to curb and prevent the use of firearms and
25 other weapons in crime and by incompetent persons without
26 prohibiting the lawful use in defense of life, home, and
27 property, and the use by United States or state military
28 organizations, and as otherwise now authorized by law, including

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the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places, and lawful hunting and other lawful purposes.

(2) USES NOT AUTHORIZED.--

(a) This section does not authorize carrying a concealed weapon without a permit, as prohibited by ss. 790.01 and 790.02.

(b) The protections of this section do not apply to the following:

1. A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or who is a habitual or chronic alcoholic, or a person using weapons or firearms in violation of ss. 790.07-790.12, 790.14-790.19, 790.22-790.24.+

2. Vagrants and other undesirable persons as defined in s. 856.02.+

3. A person in or about a place of nuisance as defined in s. 823.05, unless such person is there for law enforcement or some other lawful purpose.

(3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(a) Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing

56 themselves for military duty, or while subject to recall or
57 mobilization.+

58 (b) Citizens of this state subject to duty in the Armed
59 Forces under s. 2, Art. X of the State Constitution, under
60 chapters 250 and 251, and under federal laws, when on duty or
61 when training or preparing themselves for military duty.+

62 (c) Persons carrying out or training for emergency
63 management duties under chapter 252.+

64 (d) Sheriffs, marshals, prison or jail wardens, police
65 officers, Florida highway patrol officers, game wardens, revenue
66 officers, forest officials, special officers appointed under the
67 provisions of chapter 354, and other peace and law enforcement
68 officers and their deputies and assistants and full-time paid
69 peace officers of other states and of the Federal Government who
70 are carrying out official duties while in this state.+

71 (e) Officers or employees of the state or United States
72 duly authorized to carry a concealed weapon.+

73 (f) Guards or messengers of common carriers, express
74 companies, armored car carriers, mail carriers, banks, and other
75 financial institutions, while actually employed in and about the
76 shipment, transportation, or delivery of any money, treasure,
77 bullion, bonds, or other thing of value within this state.+

78 (g) Regularly enrolled members of any organization duly
79 authorized to purchase or receive weapons from the United States
80 or from this state, or regularly enrolled members of clubs
81 organized for target, skeet, or trap shooting, while at or going
82 to or from shooting practice; or regularly enrolled members of
83 clubs organized for modern or antique firearms collecting, while

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such members are at or going to or from their collectors' gun shows, conventions, or exhibits.†

(h) A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition.†

(i) A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.†

(j) A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.†

(k) A person firing weapons in a safe and secure indoor range for testing and target practice.†

(l) A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.†

(m) A person parking a motor vehicle on any property set aside for the parking of a motor vehicle, whether or not such property is designated as a parking lot, parking facility, or parking space, when a firearm or firearms are being lawfully stored and transported in the motor vehicle and the firearm or firearms are locked in or locked to the motor vehicle.

(n) ~~(m)~~ A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.†

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112 (o)~~(n)~~ A person possessing arms at his or her home or
 113 place of business.†
 114 (p)~~(e)~~ Investigators employed by the several public
 115 defenders of the state, while actually carrying out official
 116 duties, provided such investigators:
 117 1. Are employed full time;
 118 2. Meet the official training standards for firearms
 119 established by the Criminal Justice Standards and Training
 120 Commission as provided in s. 943.12(5) and the requirements of
 121 ss. 493.6108(1)(a) and 943.13(1)-(4); and
 122 3. Are individually designated by an affidavit of consent
 123 signed by the employing public defender and filed with the clerk
 124 of the circuit court in the county in which the employing public
 125 defender resides.
 126 (q)~~(p)~~ Investigators employed by the capital collateral
 127 representative, while actually carrying out official duties,
 128 provided such investigators:
 129 1. Are employed full time;
 130 2. Meet the official training standards for firearms as
 131 established by the Criminal Justice Standards and Training
 132 Commission as provided in s. 943.12(1) and the requirements of
 133 ss. 493.6108(1)(a) and 943.13(1)-(4); and
 134 3. Are individually designated by an affidavit of consent
 135 signed by the capital collateral representative and filed with
 136 the clerk of the circuit court in the county in which the
 137 investigator is headquartered.
 138 (4) CONSTRUCTION.--This act shall be liberally construed
 139 to carry out the declaration of policy herein and in favor of

140 the constitutional right to keep and bear arms for lawful
141 purposes. This act is supplemental and additional to existing
142 rights to bear arms now guaranteed by law and decisions of the
143 courts of Florida, and nothing herein shall impair or diminish
144 any of such rights. This act shall supersede any law, ordinance,
145 or regulation in conflict herewith.

146 (5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding
147 subsection (2), it is lawful and is not a violation of s. 790.01
148 for a person 18 years of age or older to possess a concealed
149 firearm or other weapon for self-defense or other lawful purpose
150 within the interior of a private conveyance, without a license,
151 if the firearm or other weapon is securely encased or is
152 otherwise not readily accessible for immediate use. Nothing
153 herein contained prohibits the carrying of a legal firearm other
154 than a handgun anywhere in a private conveyance when such
155 firearm is being carried for a lawful use. Nothing herein
156 contained shall be construed to authorize the carrying of a
157 concealed firearm or other weapon on the person. This subsection
158 shall be liberally construed in favor of the lawful use,
159 ownership, and possession of firearms and other weapons,
160 including lawful self-defense as provided in s. 776.012.

161 (6) STORAGE AND TRANSPORT OF FIREARMS IN LOCKED VEHICLE IN
162 PARKING AREA; PENALTY; IMMUNITY FROM LIABILITY.--

163 (a) No person, property owner, tenant, employer, or
164 business entity shall establish, maintain, or enforce any policy
165 or rule that prohibits or has the effect of prohibiting any
166 person who may lawfully possess, purchase, receive, or transfer
167 firearms from parking a motor vehicle on any property set aside

168 for the parking of a motor vehicle, whether or not such property
169 is designated as a parking lot, parking facility, or parking
170 space, when the person is lawfully transporting and storing a
171 firearm or firearms in the motor vehicle and the firearm or
172 firearms are locked in or locked to the motor vehicle. Any
173 person, property owner, tenant, employer, or owner of a business
174 entity who violates this paragraph commits a felony of the third
175 degree, punishable as provided in s. 775.082, s. 775.083, and s.
176 775.084. This subsection shall be liberally construed in favor
177 of the lawful use, ownership, and possession of firearms and
178 other weapons, including lawful self-defense as provided in s.
179 776.012.

180 (b) No person, property owner, tenant, employer, or
181 business entity shall be liable in any civil action for any
182 occurrence which results from, is connected with, or is
183 incidental to the use of a firearm which is being lawfully
184 transported and stored in a locked motor vehicle on any property
185 set aside for the parking of motor vehicles as provided in
186 paragraph (a), unless the person, property owner, tenant,
187 employer, or owner of the business entity commits a criminal act
188 involving the use of such firearm.

189 (c)1. A person who is injured, physically or otherwise, as
190 a result of any policy or rule prohibited by paragraph (a) may
191 bring a civil action in the appropriate court against any
192 person, property owner, tenant, employer, or business entity
193 violating the provisions of paragraph (a), including an action
194 to enforce this subsection. If a plaintiff prevails in a civil
195 action related to a policy or rule prohibited by this act, the

196 court shall award actual damages, enjoin further violations of
197 this act, and award court costs and attorney's fees to the
198 prevailing plaintiff.

199 2. An employee discharged by an employer or business
200 entity for violation of a policy or rule prohibited under
201 paragraph (a), when such employee was lawfully transporting or
202 storing a firearm in a locked motor vehicle on property set
203 aside by the employer or business entity for the parking of
204 motor vehicles as provided in paragraph (a), is entitled to full
205 recovery as specified in sub-subparagraphs a.-d. In the event
206 the demand for such recovery is denied, the employee may bring a
207 civil action in the courts of this state against the employer
208 and is entitled to:

209 a. Reinstatement to the same position held at the time of
210 his or her termination from employment, or to an equivalent
211 position.

212 b. Reinstatement of the employee's full fringe benefits
213 and seniority rights, as appropriate.

214 c. Compensation, if appropriate, for lost wages, benefits,
215 or other lost remuneration caused by the termination.

216 d. Payment of reasonable attorney's fees and costs
217 incurred.

218 (d) As used in this section, "motor vehicle" means any
219 automobile, truck, minivan, sports utility vehicle, motorcycle,
220 motor scooter, or any other vehicle required to be registered
221 under Florida law.

222 (e) It is the intent of this subsection to reinforce and
223 protect the right of each law-abiding citizen to enter and exit

224 | any parking lot, parking facility, or space used for the parking
 225 | of motor vehicles while such person is lawfully transporting and
 226 | storing a firearm or firearms in the motor vehicle and the
 227 | firearm or firearms are locked in or locked to the motor
 228 | vehicle, to avail himself or herself of temporary or long-term
 229 | parking or storage of a motor vehicle, and to prohibit any
 230 | infringement of the right to lawful possession of firearms when
 231 | such firearms are being transported and stored in a vehicle for
 232 | a lawful purpose.

233 | Section 2. Subsection (1) of section 27.53, Florida
 234 | Statutes, is amended to read:

235 | 27.53 Appointment of assistants and other staff; method of
 236 | payment.--

237 | (1) The public defender of each judicial circuit is
 238 | authorized to employ and establish, in such numbers as
 239 | authorized by the General Appropriations Act, assistant public
 240 | defenders and other staff and personnel pursuant to s. 29.006,
 241 | who shall be paid from funds appropriated for that purpose.
 242 | Notwithstanding the provisions of s. 790.01, s. 790.02, or s.
 243 | 790.25(2)(a), an investigator employed by a public defender,
 244 | while actually carrying out official duties, is authorized to
 245 | carry concealed weapons if the investigator complies with s.
 246 | 790.25(3) (p) ~~(e)~~. However, such investigators are not eligible
 247 | for membership in the Special Risk Class of the Florida
 248 | Retirement System. The public defenders of all judicial circuits
 249 | shall jointly develop a coordinated classification and pay plan
 250 | which shall be submitted on or before January 1 of each year to
 251 | the Justice Administrative Commission, the office of the

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252 President of the Senate, and the office of the Speaker of the
253 House of Representatives. Such plan shall be developed in
254 accordance with policies and procedures of the Executive Office
255 of the Governor established in s. 216.181. Each assistant public
256 defender appointed by a public defender under this section shall
257 serve at the pleasure of the public defender. Each investigator
258 employed by a public defender shall have full authority to serve
259 any witness subpoena or court order issued, by any court or
260 judge within the judicial circuit served by such public
261 defender, in a criminal case in which such public defender has
262 been appointed to represent the accused.



263 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 339 CS
SPONSOR(S): Brandenburg
TIED BILLS:

Sexual Predators

IDEN./SIM. BILLS: SB 508

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Judiciary Committee</u>	<u></u>	<u>Hogge</u> 	<u>Hogge</u> 
3) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 339 amends the definition of the terms "permanent residence" and "temporary residence" which apply to the sexual predator and sexual offender statutes. A permanent residence will be defined as a place where a person abides, lodges, or resides for 5 or more consecutive days, rather than 14 or more consecutive days. A temporary residence will be defined as a place where a person abides, lodges, or resides for a period of 5 or more days, rather than 14, in the aggregate during any calendar year and which is not the person's permanent residence. This will have the affect of reducing the amount of time that a sexual predator or sexual offender is allowed to reside at a location before he or she must report the residence to law enforcement.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote limited government: The bill will require a sexual predator or sexual offender to report a new residence to law enforcement when he or she has been residing at a location for 5 days, rather than 14 days.

B. EFFECT OF PROPOSED CHANGES:

Background:

Sexual Predator Definition: As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a "sexual predator." Specifically, a person must be designated a "sexual predator" if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
 - a. kidnapping or false imprisonment¹ where the victim is a minor and the defendant is not the victim's parent;
 - b. sexual battery;²
 - c. lewd or lascivious offenses;³
 - d. selling or buying of minors for child pornography;⁴ or
 - e. a violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, one of the following offenses:
 - a. kidnapping, false imprisonment or luring or enticing a child⁵ where the victim is a minor and the defendant is not the victim's parent;
 - b. sexual battery;⁶
 - c. procuring a person under the age of 18 for prostitution;⁷
 - d. lewd or lascivious offenses;
 - e. lewd or lascivious battery on an elderly person;⁸
 - f. promoting sexual performance by a child;⁹
 - g. selling or buying of minors for child pornography; or
 - h. a violation of a similar law of another jurisdiction.¹⁰

Registration of Residence: If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially

¹ s. 787.01, F.S. or s. 787.02, F.S.,

² See chapter 794, F.S.

³ s. 800.04, F.S.

⁴ s. 847.0145, F.S.

⁵ s. 787.025, F.S.

⁶ Excluded are offenses contained in ss. 794.011(10) and 794.0235, F.S.

⁷ s. 796.03, F.S.

⁸ s. 825.1025(2)(b), F.S.

⁹ s. 827.071, F.S.

¹⁰ Additionally, a person must be designated as a sexual predator if he or she committed one of the offenses listed in a. through h. above and has previously been convicted of the offense of selling or showing obscenity to a minor or using a computer to solicit sexual conduct of or with a minor [ss. 847.0133 or 847.0135, F.S.]

register in person at a Florida Department of Law Enforcement (FDLE) office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

The term "permanent residence" is defined as a place where the person abides, lodges, or resides for 14 or more consecutive days. The term "temporary residence" is defined as a place where the person abides, lodges or resides for a period of 15 or more days in the aggregate during any calendar year and which is not the person's permanent residence. For a person whose permanent residence is not in the state, the term includes a place where the person is employed, practices a vocation or is enrolled as a student for any period of time. The term also includes a place where the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence, including any out-of-state address.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community must register at a driver's license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.¹¹ A sexual predator's failure to comply with registration requirements is a third degree felony.¹²

Sexual offender registration: As of November 17, 2005, there were 30,583 sexual offenders in the state registry. In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred.¹³

A sexual offender is required to report and register in a manner similar to a sexual predator. The definition of the terms "temporary residence" and "permanent residence" are the same as those under the sexual predator statute.¹⁴ Failure of a sexual offender to comply with the registration requirements is a third degree felony.¹⁵

Effect of HB 339

HB 339 amends the definition of the terms "permanent residence" and "temporary residence" for purposes of the sexual predator and sexual offender registration requirements. A permanent residence will be defined as a place where a person abides, lodges, or resides for 5 or more consecutive days, rather than 14 or more consecutive days. A temporary residence will be defined as a place where a person abides, lodges, or resides for a period of 5 (rather than 14) or more days in the aggregate during any calendar year and which is not the person's permanent residence. This will reduce the

¹¹ s. 775.21(8), F.S.

¹² s. 775.21(10), F.S.

¹³ Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997 from the sanction imposed for the offense: kidnapping, false imprisonment or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent; sexual battery; procuring a person under the age of 18 for prostitution; lewd or lascivious offenses; lewd or lascivious battery on an elderly person; promoting sexual performance by a child; selling or buying a minors for child pornography; selling or showing obscenity to a minor; using a computer to solicit sexual conduct of or with a minor; transmitting child pornography; transmitting material harmful to minors; violating a similar law of another jurisdiction.

¹⁴ s. 943.0435(1)(c), F.S.

¹⁵ s. 943.0435(9)(a), F.S.

amount of time that a sexual predator or sexual offender is allowed to reside at a location before he or she must report the residence to law enforcement. As a result, law enforcement will be able to more quickly identify where sexual predators and sexual offenders are living. As under current law, for a person whose permanent residence is not in the state, a temporary residence will be defined as a place where the person is employed, practices a vocation or is enrolled as a student for any period of time in the state.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S.; amending definitions.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The FDLE estimates that the bill will have a non-recurring impact of \$70,600 on the department. According to the department's fiscal analysis:

Cost estimates reflect documented notification to all registrants within the Florida sexual offender database (currently over 35,000); reprinting and distribution of all related registration, notice of responsibility forms and related documents and system adaptations and reporting requirements.

Notification and documentation to registrants:	\$35,500
Update and distribute forms:	\$22,700
Criminal Justice Training	\$3,400
System Programming:	\$9,000
Total:	\$70,600

The bill makes no provision for funding to cover these expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that this bill requires a person to register address changes more frequently, it may have a fiscal impact on a sexual predator or sexual offender.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill contains no appropriation to cover the fiscal impact anticipated by the FDLE. The bill could be amended to include a specific appropriation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

As originally filed, the bill removed part of the definition of temporary residence relating to a person whose permanent residence is not in the state but who works or is enrolled as a student in the state. The Criminal Justice Committee adopted an amendment which reinstated this language.

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CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to sexual predators; amending s. 775.21, F.S.; redefining the terms "permanent residence" and "temporary residence" in order to reduce the number of consecutive days and days in the aggregate which constitute the residence of a sexual predator for purposes of requirements that the predator register with the Department of Law Enforcement, the sheriff's office, or the Department of Corrections; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (f) and (g) of subsection (2) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.--

(2) DEFINITIONS.--As used in this section, the term:

(f) "Permanent residence" means a place where the person abides, lodges, or resides for 5 14 or more consecutive days.

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24 (g) "Temporary residence" means a place where the person
25 abides, lodges, or resides for a period of 5 ~~14~~ or more days in
26 the aggregate during any calendar year and which is not the
27 person's permanent address; or ~~or~~ for a person whose permanent
28 residence is not in this state, a place where the person is
29 employed, practices a vocation, or is enrolled as a student for
30 any period of time in this state; ~~or a place where the person~~
31 ~~routinely abides, lodges, or resides for a period of 4 or more~~
32 ~~consecutive or nonconsecutive days in any month and which is not~~
33 ~~the person's permanent residence, including any out-of-state~~
34 address.

35 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

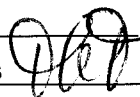
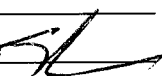
BILL #: HB 511 CS

On-line Dating Services

SPONSOR(S): Ambler

TIED BILLS:

IDEN./SIM. BILLS: SB 1806

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	5 Y, 2 N, w/CS	Reese 	Reese
2) Judiciary Committee		Thomas	Hogge 
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5) _____			

SUMMARY ANALYSIS

The bill creates the "Florida Internet Dating Safety Act" to provide residents of the state with information relating to potential personal safety risks associated with on-line dating. The legislation provides that on-line dating providers offering services to Florida members shall provide to Florida members a "safety awareness notification" with a list of descriptive safety measures designed to increase awareness of safer dating practices.

The bill also provides that an on-line dating service must disclose to Florida members whether or not the service conducts criminal background checks on its members. If such screenings are conducted, the service must disclose to Florida members that background screenings of applicants are not perfect and that there is no way to guarantee that the name provided by a person to be run through a background screening is in fact the person's true identity. The bill also requires the provider to disclose whether it has a policy allowing a member who has been identified as having a felony or sexual offense conviction to have access to its service to communicate with any Florida member.

The bill establishes the Florida Department of Agriculture and Consumer Services as the clearinghouse for intake of information relating to this act from consumers, residents, and victims.

The bill provides civil remedies for persons accessing on-line dating services not in compliance, and civil penalties against the owners of a non-compliant on-line dating service. Exclusions from the act's requirements are provided for Internet access intermediaries and Internet access service providers.

The bill does not appear to have a significant fiscal impact on state or local government. The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates government regulation over a currently unregulated business.

Safeguard individual liberty – The bill creates government regulation over a currently unregulated business.

Promote personal responsibility – The bill may increase personal responsibility for past unlawful behavior and may increase awareness of potential risks to personal safety.

B. EFFECT OF PROPOSED CHANGES:

Background

On-line dating services provide an opportunity for persons using the Internet to advertise themselves as available for dating, and to search for others similarly available. There are thousands of on-line dating services, including large generalized services and smaller specialized services. The two largest services claim to have approximately 13 million subscribers each. Smaller specialized versions often cater to particular ethnic and religious groups, or offer specialized services. On-line dating services are currently unregulated by the state.

Part II of ch. 501, F.S., is the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The act provides remedies and penalties for “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”¹ Remedies for acts prohibited by FDUTPA may include an action to enjoin a person from committing such acts,² as well as, the imposition of a civil penalty of not more than \$10,000.³ Actions may be brought by a state attorney or the Department of Legal Affairs⁴ or by a consumer.⁵

Additionally, FDUTPA permits any person who has been aggrieved by a violation under FDUTPA to obtain a declaratory judgment and to enjoin a person who has or is violating FDUTPA.⁶ A person who has suffered a loss as a result of such violation may be able to recover actual damages, attorney’s fees, and costs.⁷

Effect of Proposed Changes

The bill creates the “Florida Internet Dating Safety Awareness Act” and makes the following legislative findings:

- Residents of this state need to be informed when viewing websites of on-line dating services as to potential risks to personal safety associated with on-line dating.

¹ Section 501.204, F.S.

² Section 501.207(1)(b), F.S.

³ Section 501.2075, F.S. Violations against a senior citizen or handicapped person may result in a penalty of not more than \$15,000 (s. 501.2077, F.S.).

⁴ Section 501.207, F.S.

⁵ *Id.*

⁶ Section 501.211(1), F.S.

⁷ Section 501.211(2), F.S.

- Requiring disclosures in the form of guidelines for safer dating and informing residents as to whether a criminal background screening has been conducted on members of on-line dating services fulfills a compelling state interest to increase public awareness of possible risks associated with Internet dating activities.
- The act of transmitting electronic dating information over the Internet addressed to residents of the state, and the act of accepting membership fees from residents of the state, means that an on-line dating service is operating, conducting, engaging in, and otherwise carrying on a business in the state subjecting such on-line dating service providers to regulation by the state and to the jurisdiction of the state's courts.

The bill provides definitions for "communicate or communicating," "criminal background screening," "department," "Florida member," "member," "on-line dating service provider or provider," and "sexual offense conviction."

Provider safety awareness disclosures

An on-line dating service provider offering services to Florida members must disclose:

- A safety awareness notification that includes a list and description of safety measures reasonably designed to increase awareness of safer dating practices as determined by the provider.
- Whether or not the website conducts criminal background screenings. Such disclosure must be in bold, capital letters in at least 12-point type.

If the on-line dating service provider conducts criminal background screenings, the provider must disclose that background screenings of applicants are not perfect and that there is no way to guarantee that the name provided by a person to be run through a background screening is in fact the person's true identity and that not all criminal records are publicly available. The bill further states the screenings may not identify every member who has a felony or sexual offense conviction and users should participate in the service at their own risk and use caution when communicating with other members. The bill also requires the provider to disclose whether it has a policy allowing a member who has been identified as having a felony or sexual offense conviction to have access to its service to communicate with any Florida member.

Clearinghouse

The bill provides that the Department of Agriculture and Consumer Services shall serve as the clearinghouse for intake of all information from consumers, residents, and victims concerning the act. The consumer hotline may be used for intake of information, which may be directed to the appropriate enforcement authority, as determined by the department.

Civil Penalties

This bill provides that failure of an on-line dating service provider to comply with the disclosure requirements is a deceptive and unfair trade practice under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Each failure to provide a required disclosure constitutes a separate violation. Under FDUTPA, the state⁸ may seek declaratory and injunctive relief against a violator. The state may also seek a civil penalty of up to \$10,000 for a willful violation, plus attorney's fees. The Attorney General may issue a cease and desist order to anyone violating FDUTPA. An individual may bring an action for injunctive relief, actual damages, and attorney's fees.

⁸ Section 501.203(2), F.S., provides that the state attorney for the judicial circuit in which the violation occurred is the primary enforcing authority. If the violation occurs in more than one judicial circuit, if the state attorney defers, or if the state attorney does not act on a complaint within 90 days, the Attorney General is the enforcing authority.

In addition to the FDUTPA remedy, this bill provides that a court may impose a civil penalty of up to \$1,000 per violation, with an aggregate total not to exceed \$25,000 for any 24-hour period, against any on-line dating service provider who violates any requirement of this act. Suit may be brought by either the Department of Legal Affairs or by the Division of Consumer Services of the Department of Agriculture and Consumer Services. Penalties collected accrue to the enforcing agency to "further consumer enforcement efforts."

Exceptions to Regulation

This bill provides: "An internet service provider does not violate this act solely as a result of serving as an intermediary for the transmission of electronic messages between members of an on-line dating service provider." Primarily, this protects internet service providers from being deemed an on-line dating service company simply because they are transmitting e-mail and instant messages between persons.

Another exception is provided for Internet web access services, which are not considered an on-line dating service provider simply for renting storage space and bandwidth.

C. SECTION DIRECTORY:

Section 1. Creates s. 501.165, F.S., creating a short title and stating legislative intent.

Section 2. Creates s. 501.166, F.S., providing definitions applicable to regulation of on-line dating service providers.

Section 3. Creates s. 501.167, F.S., requiring certain disclosures by on-line dating service providers.

Section 4. Creates s. 501.168, F.S., naming the Department of Agriculture and Consumer Services as the clearinghouse for intake of information relating to the act.

Section 5. Creates s. 501.169, F.S., creating civil penalties for failure of an on-line dating service provider to comply with the act.

Section 6. Creates s. 501.171, F.S., to provide exclusions.

Section 7. Provides direction to the Division of Statutory Revision.

Section 8. Creates a severability clause.

Section 9. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides that the any penalties collected may be kept by the enforcing authority to further consumer enforcement efforts. It is unknown to what extent penalties will be collected under this act. The enforcing authority may be a state attorney, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services.

2. Expenditures:

The bill provides that the act is to be enforced by a state attorney, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services. It is unknown to what extent the act will be enforced and what expenditures will be required.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears as if it may have a fiscal impact on thousands of website owners, who will be required to reprogram their websites in order to comply with the bill's requirements, or cease offering services to Florida residents. Website operators who elect to change their operation because of this bill may also incur the cost of ordering and analyzing criminal history background checks.

This bill may increase the cost to Florida residents who utilize on-line dating services should more providers start requiring criminal history background checks.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

There have been attempts by federal and state governments to regulate the Internet and some have been found unconstitutional. Constitutional concerns may be raised by the bill related to the Commerce Clause, the First Amendment, and Due Process. The First Amendment issue applies regardless of where the website operator resides. The Commerce Clause and Due Process issues apply only to websites operated outside of the state. Staff is unaware of any major on-line dating service provider headquartered in Florida.⁹

Commerce Clause

The United States Supreme Court describes the Commerce Clause as follows:

The Commerce Clause and its nexus requirement are informed not so much by concerns about fairness for the individual defendant as by structural concerns about the effects of state regulation on the national economy. Under the Articles of Confederation, state taxes and duties hindered and suppressed interstate commerce; the Framers intended

⁹ Two of the three largest on-line dating services are located in California; the third is located in Texas.

the Commerce Clause as a cure for these structural ills. It is in this light that we have interpreted the negative implication of the Commerce Clause.¹⁰

The Commerce Clause allows Congress to regulate commerce between the states. Congress has stated that "it is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."¹¹ It could be argued that this clause states a congressional intent that the states may not regulate the Internet.

Dormant commerce clause analysis is a part of Commerce Clause analysis. The dormant commerce clause is the theory that, where Congress has not acted to regulate or deregulate a specific form of commerce between the states, it is presumed that Congress would prohibit unreasonable restrictions upon that form of interstate commerce.¹²

Dormant Commerce Clause doctrine distinguishes between state regulations that "affirmatively discriminate" against interstate commerce and evenhanded regulations that "burden interstate transactions only incidentally."¹³ Regulations that "clearly discriminate against interstate commerce [are] virtually invalid per se,"¹⁴ while those that incidentally burden interstate commerce will be struck down only if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."¹⁵

State regulations may burden interstate commerce "when a statute (i) shifts the costs of regulation onto other states, permitting in-state lawmakers to avoid the costs of their political decisions, (ii) has the practical effect of requiring out-of-state commerce to be conducted at the regulating state's direction, or (iii) alters the interstate flow of the goods in question, as distinct from the impact on companies trading in those goods."¹⁶

"A state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause."¹⁷ Because the Internet does not recognize geographic boundaries, it is difficult, if not impossible, for a state to regulate Internet activities without "project[ing] its legislation into other States."¹⁸ "We think it likely that the internet will soon be seen as falling within the class of subjects that are protected from State regulation because they 'imperatively demand[] a single uniform rule.'"¹⁹

The court enjoined New York from enforcing a statute which prevented communications with minors over the Internet "which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors."²⁰ The court found that the statute violated the Commerce Clause for three reasons:

¹⁰ *Quill Corp. v. North Dakota*, 504 U.S. 298, 312 (1992) (internal citations omitted).

¹¹ 47 U.S.C. 230(b).

¹² The Commerce Clause also allows Congress to specifically leave regulation of an area to the states, even if the effect of leaving such regulation to the states leads to burdensome and conflicting regulation. The most notable example of this is regulation of the insurance industry.

¹³ *Maine v. Taylor*, 477 U.S. 131, 138 (1986).

¹⁴ *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir. 2001).

¹⁵ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

¹⁶ *Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200, 208-09 (2d Cir. 2003) (citations omitted).

¹⁷ *Healy v. The Beer Institute*, 491 U.S. 324, 332 (1989).

¹⁸ *Id.* at 334.

¹⁹ *American Booksellers Foundation v. Dean*, 342 F.3d 96, 104 (2d Cir. 2003). See also, *ACLU v. Johnson*, 194 F.3d 1149, 1162 (10th Cir. 1999); and *American Libraries Association v. Pataki*, 969 F.Supp. 160 (S.D.N.Y. 1997) (all three cases striking a state law regulating Internet commerce as a violation of the dormant commerce clause).

²⁰ *American Libraries Ass'n v. Pataki*, 969 F.Supp. 160, 163 (S.D.N.Y. 1997).

First, the practical impact of the New York Act results in the extraterritorial application of New York law to transactions involving citizens of other states and is therefore per se violative of the Commerce Clause. Second, the benefits derived from the Act are inconsequential in relation to the severe burdens it imposes on interstate commerce. Finally, the unique nature of cyberspace necessitates uniform national treatment and bars the states from enacting inconsistent regulatory schemes.²¹

The bill provides that it only applies to web pages viewed by persons in Florida. Case law has said that "it remains difficult for 'publishers' who post information on the Internet to limit website access to . . . viewers from certain states."²² However, users of on-line dating service providers are required to give their location, and have incentive to do so because of the local nature of dating.

Neither the United States Supreme Court nor the 11th Circuit has addressed the impact of the Commerce Clause on state regulation of the Internet. This bill may impose some burden on interstate commerce; the key question for Commerce Clause analysis is whether such burden is "unreasonable."

First Amendment

This bill requires that an Internet provider give one or more specific messages to all persons who access the website, and provides civil penalties for the failure to provide that message.

The First Amendment right to free speech applies to commercial speech.²³ In later decisions, the Supreme Court gradually articulated a test based on the "commonsense distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech."²⁴ *Central Hudson* identified several factors that courts should consider in determining whether a regulation of commercial speech survives First Amendment scrutiny:

For commercial speech to come within [the First Amendment], it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.²⁵

The Supreme Court has held that the Government carries the burden of showing that a challenged regulation directly advances the governmental interest asserted in a direct and material way.²⁶ That burden "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree."²⁷ The Court cautions that this requirement is critical; otherwise, "a State could with ease restrict commercial speech in the service of other objectives that could not themselves justify a burden on commercial expression."²⁸

A state cannot compel a person to distribute a particular statement that the person disagrees with. A Florida law requiring that a newspaper that published an editorial critical of a candidate for political

²¹ *Id.* at 183-184.

²² *American Booksellers v. Dean*, 342 F.3d 96, 99 (2nd Cir. 2003).

²³ *Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

²⁴ *Central Hudson Gas & Electric Corp. v. Public Service Commission of N.Y.*, 447 U.S. 557 (1980).

²⁵ *Id.* at 566.

²⁶ *Edenfeld v. Fane*, 507 U.S. 761 (1993).

²⁷ *Id.* at 770-771.

²⁸ *Id.* at 771. See also, *Rubin v. Coors Brewing Company*, 514 U.S. 476 (1995) (prohibiting certain government regulation of beer labeling despite a government argument that such restrictions were necessary for health, safety and welfare).

office provide the politician with space to make a reply was found unconstitutional.²⁹ The United States Supreme Court ruled that California cannot compel a utility company to give its excess space in billing envelopes to other entities.³⁰ "Compelled access like that ordered in this case [by the utilities commission] both penalizes the expression of particular points of view and forces speakers to alter their speech to conform with an agenda they do not set."³¹ It is possible that a court may find that the statements required by this bill rise to the level of compelled speech.

Jurisdiction Over Non-Residents

The due process clause of the state and federal constitutions require the courts to provide due process to all litigants in any court case. One part of the concept of due process is the requirement that a court not act unless the court has legal jurisdiction over a party to the litigation. It is a violation of due process for a court to enter a judgment affecting a person unless the court has jurisdiction over that person.

Whether the State of Florida can exercise civil jurisdiction over a website operator in a foreign country is a matter of treaty. It is possible that the State, or a citizen of the state, may be able to prosecute a civil cause of action against a website operator located in a foreign country who is violating the provisions of this bill.

It is likely that the state can impose civil court jurisdiction over a citizen of another state who violates the provisions of this bill. The leading case on civil jurisdiction over Internet commerce is from a federal district court in Pennsylvania.³² This case makes a distinction between a passive website, one that just provides information, versus an active website that actively takes orders and allows the operator to enter into contracts with citizens of the state. The rule from this case is that the operator of a passive website is not subject to personal jurisdiction in any state where someone may happen to view the website. On the other hand, the operator of an active website that accepts sales orders from the resident of a state should anticipate having to defend a civil lawsuit in that state.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Committee on Agriculture adopted one amendment to HB 511. The amendment clarifies the provisions relating to criminal background screenings to be conducted by the on-line dating service provider.

²⁹ *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

³⁰ *Pacific Gas and Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986).

³¹ *Id.* at 9.

³² *Zippo Mfg. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa. 1997).

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CHAMBER ACTION

The Agriculture Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to on-line dating services; creating ss. 501.165-501.171, F.S., the "Florida Internet Dating Safety Awareness Act"; providing legislative findings; defining terms; requiring certain disclosures by on-line dating services; providing a clearinghouse for consumers; providing civil penalties; providing exclusions; providing a directive to the Division of Statutory Revision; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.165, Florida Statutes, is created to read:

501.165 Florida Internet Dating Safety Awareness Act; legislative findings.--

(1) Sections 501.165-501.171 may be cited as the "Florida Internet Dating Safety Awareness Act."

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(2) (a) The Legislature has received public testimony that criminals and sex offenders use on-line dating services to prey upon the citizens of this state.

(b) The Legislature finds that residents of this state need to be informed when viewing websites of on-line dating services as to potential risks to personal safety associated with on-line dating. Also, requiring disclosures in the form of guidelines for safer dating and informing residents as to whether a criminal background screening has been conducted on members of an on-line dating service fulfills a compelling state interest to increase public awareness of the possible risks associated with Internet dating activities.

(c) The Legislature finds that the act of transmitting electronic dating information over the Internet addressed to residents of the state, and the act of accepting membership fees from residents of the state, means that an on-line dating service is operating, conducting, engaging in, and otherwise carrying on a business in the state subjecting such on-line dating service providers to regulation by the state and to the jurisdiction of the state's courts.

Section 2. Section 501.166, Florida Statutes, is created to read:

501.166 Definitions.--As used in ss. 501.165-501.171:

(1) "Communicate" or "communicating" means free-form text authored by a member or real-time voice communication through an on-line dating service provider.

(2) "Criminal background screening" means a search for a person's felony and sexual offense convictions initiated by an

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51 on-line dating service provider and conducted by one of the
52 following means:

53 (a) By searching available and regularly updated
54 government public record databases for felony and sexual offense
55 convictions so long as such databases, in the aggregate, provide
56 substantial national coverage; or

57 (b) By searching a database maintained by a private vendor
58 that is regularly updated and is maintained in the United States
59 with substantial national coverage of criminal history records
60 and sexual offender registries.

61 (3) "Department" means the Department of Agriculture and
62 Consumer Services.

63 (4) "Florida member" means a member as defined in
64 subsection (5) who provides a Florida billing address or zip
65 code when registering with the provider.

66 (5) "Member" means a person who submits to an on-line
67 dating service provider the information required by the provider
68 to access the provider's service for the purpose of engaging in
69 dating and participating in compatibility evaluations with other
70 persons or obtaining matrimonial matching services.

71 (6) "On-line dating service provider" or "provider" means
72 a person engaged in the business of offering or providing to its
73 members access to dating and compatibility evaluations between
74 persons or matrimonial matching services through the Internet.

75 (7) "Sexual offense conviction" means a conviction for an
76 offense that would qualify the offender for registration as a
77 sexual offender pursuant to s. 943.0435 or under another
78 jurisdiction's equivalent statute.

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Section 3. Section 501.167, Florida Statutes, is created to read:

501.167 Provider safety awareness disclosures.--An on-line dating service provider offering services to Florida members shall:

(1) Provide a safety awareness notification with, at a minimum, information that includes a list and description of safety measures reasonably designed to increase awareness of safer dating practices as determined by the provider. Examples of such notifications include:

(a) "Anyone who is able to commit identity theft can also falsify a dating profile."

(b) "There is no substitute for acting with caution when communicating with any stranger who wants to meet you."

(c) "Never include your last name, e-mail address, home address, phone number, place of work, or any other identifying information in your on-line profile or initial e-mail messages. Stop communicating with anyone who pressures you for personal or financial information or attempts in any way to trick you into revealing it."

(d) "If you choose to have a face-to-face meeting with another member, always tell someone in your family or a friend where you are going and when you will return. Never agree to be picked up at your home. Always provide your own transportation to and from your date and meet in a public place at a time with many people around."

(2) If an on-line dating service provider does not conduct criminal background screenings on its members, the provider

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107 shall disclose, clearly and conspicuously, to all Florida
108 members that the on-line dating service provider does not
109 conduct criminal background screenings. The disclosure shall be
110 provided when an electronic mail message is sent or received by
111 a Florida member, on the profile describing a member to a
112 Florida member, and on the provider's website pages used when a
113 Florida member signs up. A disclosure under this subsection
114 shall be in bold, capital letters in at least 12-point type.

115 (3) If an on-line dating service provider conducts
116 criminal background screenings on all of its communicating
117 members, then the provider shall disclose, clearly and
118 conspicuously, to all Florida members that the on-line dating
119 service provider conducts a criminal background screening on
120 each member prior to permitting a Florida member to communicate
121 with another member. The disclosure shall be provided on the
122 provider's website pages used when a Florida member signs up. A
123 disclosure under this subsection shall be in bold, capital
124 letters in at least 12-point type.

125 (4) If an on-line dating service provider conducts
126 criminal background screenings, the provider shall disclose that
127 background screenings of applicants are not perfect and there is
128 no way to guarantee that the name provided by a person to be
129 used in a background screening is the person's true identity.
130 Also, not all criminal records are publicly available.
131 Therefore, the screenings may not identify every member who has
132 a felony or sexual offense conviction and members should
133 participate in the service at their own risk and use caution
134 when communicating with other members. Additionally, the

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provider shall disclose whether it has a policy allowing a member who has been identified as having a felony or sexual offense conviction to have access to its service to communicate with any Florida member.

Section 4. Section 501.168, Florida Statutes, is created to read:

501.168 Clearinghouse.--The department shall serve as the clearinghouse for intake of information concerning ss. 501.165-501.171, the Florida Internet Dating Safety Awareness Act, from consumers, residents, and victims. The consumer hotline may be used for this purpose. Information obtained shall be directed to the appropriate enforcement entity, as determined by the department.

Section 5. Section 501.169, Florida Statutes, is created to read:

501.169 Civil penalties.--

(1) An on-line dating service provider that registers Florida members must comply with the provisions of ss. 501.165-501.171.

(2) Failure to comply with the disclosure requirements of ss. 501.165-501.171 shall constitute a deceptive and unfair trade practice under part II. Each failure to provide a required disclosure constitutes a separate violation.

(3) In addition to the remedy provided in subsection (2), the court may impose a civil penalty of up to \$1,000 per violation, with an aggregate total not to exceed \$25,000 for any 24-hour period, against any on-line dating service provider that violates any requirement of ss. 501.165-501.171. Suit may be

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brought by an enforcing authority, as defined in s. 501.203. Any penalties collected shall accrue to the enforcing authority or the department's Division of Consumer Services to further consumer enforcement efforts.

Section 6. Section 501.171, Florida Statutes, is created to read:

501.171 Exclusions.--

(1) An Internet access service or other Internet service provider does not violate ss. 501.165-501.171 solely as a result of serving as an intermediary for the transmission of electronic messages between members of an on-line dating service provider.

(2) An Internet access service or other Internet service provider shall not be considered an on-line dating service provider within the meaning of ss. 501.165-501.171 as to any on-line dating service website provided by another person or entity.

Section 7. The Division of Statutory Revision is directed to include the provisions of sections 501.165-501.171, Florida Statutes, in part I of chapter 501, Florida Statutes.

Section 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 9. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 591 CS

Electronic Monitoring

SPONSOR(S): Ambler

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Cunningham	Kramer
2) Judiciary Committee		Hogge	Hogge
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill expressly authorizes courts to order the pre-trial release of defendants charged with a forcible felony or a sex-related offense for which registration is required, or having been previously convicted of such offense, is subsequently charged with any crime, subject to various conditions including electronic monitoring.

The bill permits a governmental entity or a licensed bail bond agent, meeting certain requirements, to provide monitoring services directly or by contract with a third party vendor. The electronic monitoring device must be capable of identifying the defendant's geographic position to within 9 meters using GPS technology. Defendants must pay a reasonable fee for the service.

Those providing electronic monitoring services are absolved from any liability for equipment failure or criminal acts by the defendant.

The bill requires the chief judge of each circuit to maintain a list of licensed bail bond agents meeting the standards necessary to provide electronic monitoring services. The bill also imposes standards for the electronic monitoring devices. These include, but are not limited to, meeting certain certification standards approved by the FCC, being able to emit or receive signal content 24 hours per day accurate to within 9 meters, possessing encrypted signal content, and being shock resistant.

The bill authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring systems in their respective institutions to monitor inmates and juvenile offenders and, under certain circumstances, employees, and visitors. It also requires vendor monitors to achieve certain technological and functional capabilities such as alarm speed, storage capacity, battery life, and accuracy of proximity to location.

The bill creates three new felony offenses relating to the destruction, misuse, or mimicry of electronic monitoring equipment or the recorded data contained in the equipment, for electronic monitors used within a correctional or juvenile facility.

This bill could have a significant negative fiscal impact.

This bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government → This bill authorizes licensed bail bond agents to provide electronic monitoring services for certain pretrial releasees; authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring in their respective institutions and to adopt rules relating thereto.

Promote Personal Responsibility → This bill creates new felony offenses related to tampering, misusing, or mimicking electronic monitoring equipment or the recorded data contained in the equipment.

Maintain Public Security → This bill authorizes electronic monitoring of certain pretrial releasees, inmates and juvenile offenders within their respective institutions, and employees and visitors of correctional and juvenile justice facilities.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Pretrial Release / Bail Bond Agents

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.¹ If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²

Courts may impose any number of conditions of pretrial release that are intended to ensure the defendant's presence at trial. Bail, one of the most common conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.³ Bail bond agents do not pay the bail amount, but instead act as a surety, promising to pay the bail amount if the defendant absconds. If the defendant absconds, bail bond agents are authorized to locate, detain, and bring the defendant before the sheriff. Florida bail bond agents are licensed through the Department of Financial Services.

Electronic Monitoring

Electronic monitoring is a process whereby a person's whereabouts are tracked through the use of a transmitter securely attached to the person, and a receiver that receives the transmitter's signal. Currently, electronic monitoring may be imposed as a condition of pretrial release.⁴

¹ The conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130(a), Fla. R. Crim. Proc.

² Rule 3.131(a), Fla. R. Crim. Proc.

³ s. 648.25, F.S., defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

⁴ s. 907.041(4), F.S.

Currently, Florida statutes do not specifically authorize or preclude any entity from providing electronic monitoring services. Such services are currently provided by private companies that contract with the involved agency (Department of Corrections, Department of Juvenile Justice, counties). At this time, neither DOC nor DJJ utilize electronic monitoring systems in their respective institutions.

Florida statutes do not currently provide manufacturing standards for electronic monitoring equipment.

Effect of Proposed Changes

This bill expressly authorizes courts to order the pre-trial release of defendants charged with a forcible felony or a sex-related offense for which registration is required, or having been previously convicted of such offense, is subsequently charged with any crime, subject to various conditions including electronic monitoring.

The bill permits a governmental entity or a licensed bail bond agent, meeting certain requirements, to provide monitoring services directly or by contract with a third party vendor. If provided through a third party vendor, the bail bond agent retains primary responsibility for the monitoring. The electronic monitoring device must be capable of identifying the defendant's geographic position to within 9 meters using GPS technology. Defendants must pay a reasonable fee for the service.⁵ The bill requires bail bond agents to keep electronic monitoring records and receipts separate from bail bond records.

Those providing electronic monitoring services are absolved from any liability for equipment failure or criminal acts by the defendant. Those providing electronic monitoring services must report known violations by the defendant to the appropriate authority.

The bill requires the chief judge of each circuit to maintain a list of licensed bail bond agents that annually certify that their electronic monitoring equipment meets certain specified standards. These include meeting certain certification standards approved by the FCC, being able to emit or receive signal content 24 hours per day accurate to within 9 meters, possessing encrypted signal content, and being shock resistant. The chief judge may remove a registered vendor from the list if the vendor fails to properly monitor persons or if the vendor charges an excessive fee for monitoring services. The bill provides that a fee is clearly excessive if the fee charged on a per diem basis is at least twice the average charged by other vendors on the list.

The bill authorizes and encourages the Departments of Corrections and Juvenile Justice to use electronic monitoring systems in their respective institutions to monitor inmates and juvenile offenders and, under certain circumstances, employees, and visitors. It also requires vendor monitors to achieve certain technological and functional capabilities such as alarm speed, storage capacity, battery life, and accuracy of proximity to location.

The bill creates three new third degree felony⁶ offenses relating to the destruction, misuse, or mimicry of electronic monitoring equipment or the recorded data contained in the equipment, for electronic monitors used within a correctional or juvenile facility, as follows:

- intentionally altering, tampering with, damaging, or destroying electronic monitoring equipment used to monitor a person in a DOC/DJJ facility, unless such person is the owner of the equipment or agent of the owner performing ordinary maintenance and repairs;

⁵ s. 948.33, F.S., provides that Florida bail bond agents may not execute a bail bond without charging a premium therefore. Currently, the premium rate for state bonds may not exceed 10%. <http://www.fldfs.com>.

⁶ A third degree felony is punishable by imprisonment for up to 5 years and a fine of up to \$5,000. ss. 775.082, 775.083, F.S.

- developing, building, creating, possessing, or using any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to monitor a person in a DOC/DJJ facility;
- intentionally altering, tampering with, damaging, or destroying specific data stored by any electronic monitoring equipment used to monitor a person in a DOC/DJJ facility unless done so with written permission from an authorized department official or in compliance with a data-retention policy of the department adopted by rule.

These newly created offenses are unranked on the Offense Severity Ranking Chart in the Criminal Punishment Code. Thus, the third degree felonies will default to a Level 1 offense.

C. SECTION DIRECTORY:

Section 1. Amends s. 648.387, F.S., relating to the provision of electronic monitoring services by licensed bail bond agents.

Section 2. Creates s. 907.06, F.S., providing for electronic monitoring of certain persons on pretrial release; requiring the monitored person to pay fees; authorizing bail bond agents and governmental entities to provide electronic monitoring services; authorizing bail bond agents and governmental entities to subcontract to third-party vendors for electronic monitoring services in certain circumstances; requiring the entity providing electronic monitoring services to report a monitored defendant's violations of pretrial release; providing that the provision of electronic monitoring services is not an undertaking to protect the public from harm; prohibiting a monitored person from tampering with the monitoring equipment.

Section 3. Creates s. 907.07, F.S., requiring the chief judge of each circuit to maintain a list of eligible electronic monitoring vendors; requiring eligible electronic monitoring vendors to register and certify electronic monitoring equipment; providing grounds for removal from the list.

Section 4. Creates s. 907.08, F.S., providing standards for privately owned electronic monitoring devices.

Section 5. Creates s. 907.09, F.S., providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device.

Section 6. Creates s. 944.161, F.S., providing for electronic monitoring of inmates within correctional facilities; requiring electronic monitoring of certain employees and visitors to correctional facilities; providing system requirements; providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device; authorizing the Department of Corrections to adopt rules.

Section 7. Creates s. 985.4047, F.S., providing for electronic monitoring of juveniles within juvenile facilities; requiring electronic monitoring of certain employees and visitors to juvenile facilities; providing system requirements; providing criminal penalties for tampering with, cloning the signal of, or altering or destroying data of an electronic monitoring device; authorizing the Department of Juvenile Justice to adopt rules.

Section 8. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Department of Juvenile Justice

Were it required, the estimated cost of using technology meeting the specifications outlined in the bill for monitoring within DJJ facilities would be as follows:

Total Non-Recurring Costs: \$3,060,000

Total Recurring Costs: \$3,022,521

Residential Facilities – 144

Non-Recurring Total = \$2,592,000

Servers required: 144 programs x \$15,000 (cost of server) = \$2,160,000

Antennae required: 144 programs x \$3,000 (cost of antennae sensors) = \$432,000

Recurring Total = \$2,187,258

Number of staff: 5,500 x 5 (# of ID's used weekly) x 50 weeks x \$.80 (ID cost) = \$1,100,000

Number of youth: 6,534 beds x 2 (# of ID's used weekly) x 52 weeks x \$.80 (ID cost) = \$543,629

Number of visitors: 6,534 beds x 2 (weekly visitors) x 52 weeks x \$.80 (ID cost) = \$543,629

Detention Facilities - 26

Non-Recurring Total = \$468,000

Servers required: 26 programs x \$15,000 (cost of server) = \$390,000

Antennae required: 26 programs x \$3,000 (cost of antennae) = \$78,000

Recurring Total = \$835,236

Number of staff: 2500 x 5 (# of ID's used weekly) x 50 weeks x \$.80 (ID cost) = \$500,000

Number of youth: 2,057 beds x 2 (# of ID's used weekly) x 52 weeks x \$.80 (ID cost) = \$171,143

Visitors: 17,093 (monthly visitors) x 12 months x \$.80 = \$164,093

Department of Corrections

The DOC states it would be a significant financial burden on their budget if they were required to use electronic monitoring systems in prisons. For example, according to the DOC, should the DOC be required to use an electronic monitoring system at each of their institutions, this would represent a cost of approximately \$31,000,000 (86,000 inmates x \$1 x 365 days). The cost of monitoring employees (approximately 20,000) and visitors would be in addition to this figure. The DOC states that the cost of implementing and using such a system would be at the expense of repair, replacement, and enhancement of existing facilities. For example, critical security infrastructure at several institutions could be replaced and/or enhanced for the cost of implementing an electronic monitoring system at one institution. The DOC cites little potential for staff savings should electronic monitoring systems be implemented. Ultimately, the DOC states that the cost effectiveness relative to the department's priorities does not justify the significant resource investment involved.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The DJJ states that counties pay for the cost of pre-adjudicatory detention and, thus, fund approximately 82 percent of the DJJ total detention budget. The numbers below reflect approximately 82 percent of the state detention costs outlined above.

\$384,000 – Non-recurring costs for the purchasing of startup equipment in detention centers.
\$700,000 – Recurring costs for operating the system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed bail bond agents who meet the requirements specified in the bill will benefit in that they will be permitted to provide electronic monitoring services for certain pretrial releasees and offenders. Additionally, companies who meet the requirements specified in the bill may benefit in that they would be eligible to provide electronic monitoring services for correctional and juvenile justice facilities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides a general grant of rulemaking power to the Departments of Corrections and Juvenile Justice to implement the bill's provisions (lines 396-398 and lines 519-521). The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Criminal Justice Committee adopted a strike-all amendment to the bill and reported the bill favorably with committee substitute. The strike-all amendment:

- Removed provisions of the bill relating to post-release offenders;
- Defined the terms "violent felony offense" and "sex-related offense;"
- Corrected grammatical and technical errors; and
- Eliminated the term "Radio Frequency Identification Technology" from the bill.

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CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to electronic monitoring; amending s. 648.387, F.S.; authorizing bail bond agents to be vendors of electronic monitoring services; authorizing bail bond agents to contract with third-party vendors to provide electronic monitoring of pretrial releasees in certain circumstances; authorizing bail bond agents to register with a governmental entity to provide electronic monitoring services in certain circumstances; authorizing such agents to collect a fee for electronic monitoring services; providing that failure to timely pay fees constitutes grounds to remand; providing that such fees are exempt from specified premium requirements; creating s. 907.06, F.S.; providing for electronic monitoring of certain persons on pretrial release; requiring the monitored person to pay fees; providing that provision of electronic monitoring equipment and services is not an undertaking to protect members of the public from harm occasioned by a monitored person; prohibiting a person

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being monitored from tampering with monitoring equipment;
 creating s. 907.07, F.S.; requiring the chief judge of
 each circuit to maintain a list of licensed bail bond
 agents who are eligible private vendors for provision of
 electronic monitoring services; requiring registration of
 such vendors and certification of electronic monitoring
 devices; providing grounds for removal from the list;
 creating s. 907.08, F.S.; providing standards for
 privately owned electronic monitoring devices; creating s.
 907.09, F.S.; providing criminal penalties for tampering
 with electronic monitoring devices; providing criminal
 penalties for cloning or jamming the signal of an
 electronic monitoring device; providing criminal penalties
 for the alteration or destruction of data stored or
 transmitted by an electronic monitoring device with
 specified intent; creating ss. 944.161 and 985.4047, F.S.;
 providing for electronic monitoring of inmates within
 correctional facilities and juvenile offenders within
 juvenile facilities, respectively; requiring such
 monitoring of certain employees and visitors to such
 facilities; providing system requirements; prohibiting
 specified actions relating to such monitoring systems and
 data from such systems; providing penalties; providing
 rulemaking authority; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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Section 1. Subsection (6) is added to section 648.387, Florida Statutes, to read:

648.387 Primary bail bond agents; duties; electronic monitoring services by licensed bail bond agents.--

(6)(a) A licensed bail bond agent who meets the requirements of s. 907.07 may be a vendor of electronic monitoring services. A licensed bail bond agent may also subcontract for such services with a third-party vendor of the bail bond agent's choice provided the licensed bail bond agent can certify that the equipment and services rendered by such third-party vendor on the bail bond agent's behalf meet the requirements of s. 907.07 for monitoring of a defendant for whom the bail bond agent has provided a criminal surety bail bond. A licensed bail bond agent who meets the requirements of s. 907.07 may additionally register with a governmental entity to provide electronic monitoring services when monitoring has been ordered by a court.

(b) A licensed bail bond agent may charge a reasonable, nonrefundable fee for electronic monitoring services from a person who is subject to electronic monitoring. Failure to timely pay such fees constitutes grounds for the agent to remand such person to the court or sheriff. Fees charged by a bail bond agent associated with required electronic monitoring services are not considered part of the bail bond premium and shall be exempt from the provisions of s. 648.33.

(c) Records and receipts for electronic monitoring provided by a licensed bail bond agent shall be kept separate and apart from bail bond records.

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Section 2. Section 907.06, Florida Statutes, is created to read:

907.06 Electronic monitoring.--

(1) The court may order a defendant who has been charged with a forcible felony, as defined in s. 776.08, or a sex-related offense, or who has been charged with any crime and who has been previously convicted of a forcible felony or a sex-related offense, to be released from custody on a surety bond subject to conditions that include, without limitation, electronic monitoring, if electronic monitoring is available in the jurisdiction. For purposes of this section, the term "sex-related offense" includes any of the offenses contained in s. 943.0435(1)(a)1.

(2) A defendant required to submit to electronic monitoring shall pay a reasonable fee for equipment use and monitoring as an additional condition of pretrial release. The failure of the defendant to timely pay such fees constitutes a violation of pretrial release and grounds for the defendant to be remanded to the court or appropriate sheriff or law enforcement agency.

(3) Electronic monitoring shall include the provision of services to continuously receive and monitor the electronic signals from the transmitter worn by the defendant so as to be capable of identifying the defendant's geographic position at any time to within 9 meters using Global Positioning Satellite (GPS) technology, subject to the limitations related to the technology and to circumstances of force majeure. Such electronic monitoring services may be undertaken as a primary

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107 responsibility by a governmental entity or by a licensed bail
108 bond agent who may provide both bail bond services and have
109 primary responsibility or oversight for electronic monitoring
110 services. A governmental entity or licensed bail bond agent may
111 subcontract to a third-party vendor for electronic monitoring
112 services, provided such third-party vendor complies with all
113 provisions of this subsection and s. 907.08 and operates under
114 the direction and control of the governmental entity or licensed
115 bail bond agent with primary responsibility as the vendor for
116 electronic monitoring. A governmental entity that elects to
117 subcontract for electronic monitoring services shall be required
118 to select such third-party vendor through a competitive bidding
119 process.

120 (4)(a) Any person who provides electronic monitoring
121 services shall report forthwith any known violation of the
122 defendant's pretrial release conditions to the appropriate
123 court, sheriff or law enforcement agency, state attorney, and
124 licensed bail bond agent, if any.

125 (b)1. Notwithstanding paragraph (a), the provision of
126 electronic monitoring services shall not be deemed to constitute
127 an undertaking to protect members of the public from harm
128 occasioned by a monitored person. The sole duty owed by a person
129 who provides electronic monitoring is to give a law enforcement
130 officer, upon request, an indication of the physical location of
131 the monitored person at any point in time.

132 2. A person who provides electronic monitoring is not
133 responsible to other persons for equipment failure or for the
134 criminal acts of a monitored person. A provider of electronic

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135 monitoring services cannot control the activities of a monitored
136 person. It is unreasonable for any member of the public to
137 expect that a provider of electronic monitoring services will
138 provide protection against harm occasioned by a monitored
139 person.

140 (5) A defendant who has been released in accordance with
141 this section shall not alter, tamper with, damage, or destroy
142 any electronic monitoring equipment or data recorded by such
143 equipment. A defendant who is notified of a malfunction in the
144 equipment shall immediately cooperate with the vendor in
145 restoring the equipment to proper functioning. A violation of
146 this subsection constitutes a violation of pretrial release and
147 grounds for the defendant to be remanded to the court or
148 appropriate sheriff or law enforcement agency.

149 Section 3. Section 907.07, Florida Statutes, is created to
150 read:

151 907.07 Vendor requirements for provision of electronic
152 monitoring services; vendor registration and certification
153 process.--

154 (1) This section shall not apply to electronic monitoring
155 provided directly by the state, a county, or a sheriff.

156 (2) The chief judge of each judicial circuit shall
157 maintain a list of all licensed bail bond agents who are
158 eligible vendors of electronic monitoring in the circuit. For a
159 licensed bail bond agent to be an eligible vendor, a licensed
160 bail bond agent must register in accordance with this section as
161 a vendor capable of providing electronic monitoring services as
162 a primary provider or through a subcontractor in that judicial

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163 circuit. The chief judge shall place on such list of eligible
164 vendors any licensed bail bond agent in this state who certifies
165 in writing, as part of the vendor registration, that all
166 electronic monitoring equipment and electronic monitoring
167 services shall be operated and maintained in compliance with
168 this section, and who agrees as part of such certification to
169 comply with the terms of this section.

170 (3) Only a governmental entity, or a licensed bail bond
171 agent who is included on a list of eligible vendors under
172 subsection (2), shall be permitted to undertake primary
173 responsibility as a vendor of electronic monitoring services in
174 a judicial circuit of this state.

175 (4) A licensed bail bond agent shall agree to abide by the
176 following minimum terms as a condition of being included on the
177 list of eligible vendors of electronic monitoring in a given
178 judicial circuit of this state:

179 (a) The vendor shall register in writing the name of the
180 vendor, who must be a licensed bail bond agent in this state;
181 the name of an individual employed by the vendor who is to serve
182 as a contact person for the vendor; the address of the vendor;
183 and the telephone number of the contact person.

184 (b) The vendor must initially certify as part of the
185 registration, and must certify in writing at least annually
186 thereafter on a date set by the chief judge, that all of the
187 electronic monitoring devices used by the vendor and any of the
188 vendor's subcontractors comply with the requirements for
189 privately owned electronic monitoring devices in s. 907.08.

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(5) A vendor shall promptly notify the chief judge of any changes in the vendor's registration information that is required under this section.

(6) Failure to comply with the registration or recertification requirements of this section shall be grounds for removal from any chief judge's list of eligible vendors for electronic monitoring.

(7) The chief judge, in his or her discretion, may also remove any registered vendor from the list of eligible vendors if the vendor:

(a) Fails to properly monitor any person that the vendor was required to monitor; or

(b) Charges a defendant a clearly excessive fee for use and monitoring of electronic monitoring equipment. Such fees shall be considered clearly excessive if the fees charged on a per diem basis are at least twice the average fee charged by other vendors on the eligible vendor list who provide comparable electronic monitoring equipment and services in that judicial circuit.

Section 4. Section 907.08, Florida Statutes, is created to read:

907.08 Standards for privately owned electronic monitoring devices.--A privately owned electronic monitoring device provided by a vendor must, at a minimum, meet the standards set forth in this section to be used for electronic monitoring of a person under s. 907.06. A device must:

(1) Be a transmitter unit that meets certification standards approved by the Federal Communications Commission.

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- 218 (2) At the court's discretion, either:
- 219 (a) Emit signal content 24 hours per day that identifies
- 220 the specific device being worn by the defendant and the
- 221 defendant's physical location using Global Positioning Satellite
- 222 (GPS) technology accurate to within 9 meters; or
- 223 (b) Receive signal content 24 hours per day, determining
- 224 the defendant's physical location using Global Positioning
- 225 Satellite (GPS) technology accurate to within 9 meters,
- 226 recording the defendant's physical locations throughout the day,
- 227 and being capable of transmitting that record of locations to
- 228 the vendor at least daily.
- 229 (3) With respect to a unit affixed to a defendant, possess
- 230 an internal power source that provides a minimum of 1 year of
- 231 normal operation without recharging or replacing the power
- 232 source. The device must emit signal content that indicates its
- 233 power status and provides the vendor with notification of
- 234 whether the power source needs to be recharged or replaced.
- 235 (4) Possess and emit signal content that indicates whether
- 236 the transmitter has been subjected to tampering or removal.
- 237 (5) Possess encrypted signal content or another feature
- 238 designed to discourage duplication.
- 239 (6) Be of a design that is shock resistant, waterproof,
- 240 and capable of reliable function under normal atmospheric and
- 241 environmental conditions.
- 242 (7) Be capable of wear and use in a manner that does not
- 243 pose a safety hazard or unduly restrict the activities of the
- 244 defendant.

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245 (8) Be capable of being attached to the defendant in a
246 manner that readily reveals any efforts to tamper with or remove
247 the transmitter upon visual inspection.

248 (9) Use straps or other mechanisms for attaching the
249 transmitter to the defendant that are either capable of being
250 adjusted to fit a defendant of any size or that are made
251 available in a variety of sizes.

252 Section 5. Section 907.09, Florida Statutes, is created to
253 read:

254 907.09 Offenses related to electronic monitoring
255 devices.--

256 (1) It is illegal for any person to intentionally alter,
257 tamper with, damage, or destroy any electronic monitoring
258 equipment used for monitoring the location of a person pursuant
259 to court order, unless such person is the owner of the equipment
260 or an agent of the owner performing ordinary maintenance and
261 repairs. A person who violates this subsection commits a felony
262 of the third degree, punishable as provided in s. 775.082, s.
263 775.083, or s. 775.084.

264 (2) It is illegal for any person to develop, build,
265 create, possess, or use any device that is intended to mimic,
266 clone, interfere with, or jam the signal of an electronic
267 monitoring device used to monitor the location of a person
268 pursuant to court order. A person who violates this subsection
269 commits a felony of the third degree, punishable as provided in
270 s. 775.082, s. 775.083, or s. 775.084.

271 (3) A person may not intentionally alter, tamper with,
272 damage, or destroy any data stored or transmitted by any

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273 electronic monitoring equipment used for monitoring the location
274 of a person pursuant to court order with the intent to violate
275 such court order or to conceal such a violation. A person who
276 violates this subsection commits a felony of the third degree,
277 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

278 Section 6. Section 944.161, Florida Statutes, is created
279 to read:

280 944.161 Electronic monitoring of inmates within
281 correctional facilities.--

282 (1) The department is authorized and encouraged to employ
283 electronic monitoring of inmates within its custody who are
284 incarcerated within state and private correctional facilities.

285 (a) Electronic monitoring services must have the
286 capability to continuously receive and monitor electronic
287 signals from a transmitter worn by an inmate so as to
288 continuously monitor the inmate in real time and identify the
289 inmate's specific geographic position within the facility at any
290 time. Such transmitters must update in at least 5-second
291 intervals and monitor the inmate's geographical location to
292 within at least a 10-foot radius of his or her actual location
293 or to within a radius that is equal to the width of a facility's
294 average size sleeping quarters, whichever is less, subject to
295 the limitations relating to the state of the art of the
296 technology used and to circumstances of force majeure.

297 (b) Any electronic monitoring system employed shall also
298 provide transmitters to be worn by department employees,
299 employees of private-sector companies contracted to operate
300 correctional facilities, and any visitors to correctional

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301 facilities who are provided access to areas that are designated
302 for authorized personnel only. Such transmitters shall include a
303 panic safety button and must have the capability to continuously
304 receive and monitor electronic signals from a transmitter worn
305 by an employee or visitor so as to continuously monitor
306 employees and visitors in real time and identify their specific
307 geographic positions at any time. Such transmitters must update
308 in at least 5-second intervals and monitor employees and
309 visitors to within a 10-foot radius of their actual location,
310 subject to the limitations relating to the state of the art of
311 the technology used and to circumstances of force majeure.

312 (c) Any electronic monitoring system employed shall also
313 have the following technological and functional capabilities:

314 1. Be compatible with a commercially recognized wireless
315 network access standard as designated by the department and have
316 sufficient bandwidth to support additional wireless networking
317 devices in order to increase the capacity for usage of the
318 system by the correctional facility.

319 2. Be capable of issuing an alarm to an internal
320 correctional monitoring station within 3 seconds after receiving
321 a panic alert from an employee or visitor transmitter or within
322 3 seconds after violation of the established parameters for
323 permissible movement of inmates, employees, and visitors within
324 the facility.

325 3.a. Be capable of maintaining a historical storage
326 capacity sufficient to store up to 6 months of complete inmate,
327 employee, and visitor tracking for purposes of follow-up
328 investigations and vendor contract auditing. The system must be

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329 capable of recording for such purposes the continuous
330 uninterrupted movement of all monitored individuals, including
331 those in close proximity to any selected individual, by specific
332 position, not by area or zone. Such historical information must
333 also be capable of being archived by means of electronic data
334 transfer to a permanent storage medium designated as acceptable
335 by the department.

336 b. In addition, data collected from each facility each day
337 shall be electronically transmitted to an offsite central
338 clearinghouse designated by the department where the data shall
339 be maintained in a secure storage location in a permanent
340 storage medium designated as acceptable by the department as a
341 supplemental backup in order to protect the archived data from
342 alteration and to prevent loss due to disaster or other cause.

343 4. With respect to a unit affixed to an inmate, be capable
344 of possessing an internal power source that is field
345 rechargeable or that provides a minimum of 1 year of normal
346 operation without need for recharging or replacing the power
347 source. Batteries used in units must be replaceable by
348 correctional employees. The device must emit signal content that
349 indicates the power status of the transmitter and provides the
350 correctional facility monitoring station with notification of
351 whether the power source needs to be recharged or replaced.

352 5. Possess and emit signal content that indicates whether
353 the transmitter has been subjected to tampering or removal.

354 6. Possess encrypted signal content or another feature
355 designed to discourage duplication.

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7. Be of a design that is shock resistant, waterproof, and capable of reliable function under normal atmospheric and environmental conditions.

8. Be capable of wear and use in a manner that does not pose a safety hazard or unduly restrict the activities of the inmate.

9. Be capable of being attached to the inmate in a manner that readily reveals any efforts to tamper with or remove the transmitter upon visual inspection.

10. Either posses straps or other mechanisms for attaching the transmitter to the inmate which are capable of being adjusted to fit an inmate of any size or must be made available in a variety of sizes.

11. Be designed and constructed in such a way as to resist tampering with or removal by the inmate.

12. Provide a backup power source in the event of a power failure.

(2) A person may not intentionally alter, tamper with, damage, or destroy any electronic monitoring equipment used to monitor the location of a person within a correctional facility, unless the person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person may not develop, build, create, possess, or use any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to

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384 monitor the location of a person within a correctional facility.
 385 A person who violates this subsection commits a felony of the
 386 third degree, punishable as provided in s. 775.082, s.
 387 775.083, or s. 775.084.

388 (4) A person may not intentionally alter, tamper with,
 389 damage, or destroy any data stored pursuant to subparagraph
 390 (1)(c)3. unless done so with written permission from an
 391 authorized official of the department or in compliance with a
 392 data-retention policy of the department adopted by rule. A
 393 person who violates this subsection commits a felony of the
 394 third degree, punishable as provided in s. 775.082, s. 775.083,
 395 or s. 775.084.

396 (5) The department is authorized to adopt rules pursuant
 397 to ss. 120.536(1) and 120.54 to implement the provisions of this
 398 section.

399 Section 7. Section 985.4047, Florida Statutes, is created
 400 to read:

401 985.4047 Electronic monitoring of juvenile offenders
 402 within juvenile facilities.--

403 (1) The department is authorized and encouraged to employ
 404 electronic monitoring of juvenile offenders within its custody
 405 who are incarcerated within state and private juvenile offender
 406 facilities for the purpose or reducing offender on offender
 407 violence and reducing employee sexual misconduct as defined in
 408 s. 985.4045.

409 (a) Electronic monitoring services must have the
 410 capability to continuously receive and monitor electronic
 411 signals from a transmitter worn by a juvenile offender so as to

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412 continuously monitor an offender in real time and identify at
413 any time the offender's specific geographic position within the
414 facility. Such transmitters must update in at least 5-second
415 intervals and monitor the offender's geographical location to
416 within at least a 10-foot radius of his or her actual location
417 or to within a radius that is equal to the width of a facility's
418 average size sleeping quarters, whichever is less, subject to
419 the limitations relating to the state of the art of the
420 technology used and to circumstances of force majeure.

421 (b) Any electronic monitoring system employed shall also
422 provide transmitters to be worn by department employees,
423 employees of private-sector companies contracted to operate
424 juvenile facilities, and any visitors to juvenile facilities who
425 are provided access to areas that are designated for authorized
426 personnel only. Such transmitters shall include a panic button
427 and must have the capability to continuously receive and monitor
428 electronic signals from a transmitter worn by an employee or
429 visitor so as to continuously monitor employees and visitors in
430 real time and identify their specific geographic positions at
431 any time. Such transmitters must update in at least 5-second
432 intervals and monitor employees and visitors to within a 10-foot
433 radius of their actual location, subject to the limitations
434 relating to the state of the art of the technology used and to
435 circumstances of force majeure.

436 (c) Any electronic monitoring system employed shall also:

437 1. Be compatible with a commercially recognized wireless
438 network access standard as designated by the department and have
439 sufficient bandwidth to support additional wireless networking

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440 devices in order to increase the capacity for usage of the
441 system by the facility.

442 2. Be capable of issuing an alarm to an internal facility
443 monitoring station within 3 seconds after receiving a panic
444 alert from an employee or visitor transmitter or within 3
445 seconds after violation of the established parameters for
446 permissible movement of offenders, employees, and visitors
447 within the facility.

448 3.a. Be capable of maintaining a historical storage
449 capacity sufficient to store up to 6 months of complete
450 offender, employee, and visitor tracking for purposes of follow-
451 up investigations and vendor contract auditing. The system must
452 be capable of recording for such purposes the continuous
453 uninterrupted movement of all monitored individuals, including
454 those in close proximity to any selected individual, by specific
455 position, not by area or zone. Such historical information must
456 also be capable of being archived by means of electronic data
457 transfer to a permanent storage medium designated as acceptable
458 by the department.

459 b. In addition, data collected from each facility each day
460 shall be electronically transmitted to an offsite central
461 clearinghouse designated by the department where the data shall
462 be maintained in a secure storage location in a permanent
463 storage medium designated as acceptable by the department as a
464 supplemental backup in order to protect the archived data from
465 alteration and to prevent loss due to disaster or other cause.

466 4. With respect to a unit affixed to an offender, be
467 capable of possessing an internal power source that is field

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468 rechargeable or that provides a minimum of 1 year of normal
469 operation without need for recharging or replacing the power
470 source and batteries must be replaceable by facility employees.
471 The device must emit signal content that indicates the power
472 status of the transmitter and provides the facility monitoring
473 station with notification of whether the power source needs to
474 be recharged or replaced.

475 5. Possess and emit signal content that indicates whether
476 the transmitter has been subjected to tampering or removal.

477 6. Possess encrypted signal content or another feature
478 designed to discourage duplication.

479 7. Be of a design that is shock resistant, waterproof, and
480 capable of reliable function under normal atmospheric and
481 environmental conditions.

482 8. Be capable of wear and use in a manner that does not
483 pose a safety hazard or unduly restrict the activities of the
484 offender.

485 9. Be capable of being attached to the offender in a
486 manner that readily reveals any efforts to tamper with or remove
487 the transmitter upon visual inspection.

488 10. Either possess straps or other mechanisms for
489 attaching the transmitter to the offender which are capable of
490 being adjusted to fit an offender of any size or must be made
491 available in a variety of sizes.

492 11. Be designed and constructed in such a way as to resist
493 tampering with or removal by the offender.

494 12. Provide a backup power source in the event of a power
495 failure.

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(2) A person may not intentionally alter, tamper with, damage, or destroy any electronic monitoring equipment used to monitor the location of a person within a juvenile facility, unless the person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person may not develop, build, create, possess, or use any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to monitor the location of a person within a juvenile facility. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person may not intentionally alter, tamper with, damage, or destroy any data stored pursuant to subparagraph (1)(c)3. unless done so with written permission from an authorized official of the department or in compliance with a data-retention policy of the department adopted by rule. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 8. This act shall take effect October 1, 2006.